



CERCLA Compliance With Other Laws Manual

Summary of Part II

CAA, TSCA, AND Other Statutes

Office of Emergency and Remedial Response
Office of Program Management OS-240

Quick Reference Fact Sheet

Section 121(d) of CERCLA as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA), requires that remedial actions must at least attain Federal and more stringent State applicable and relevant and appropriate requirements (ARARs) upon completion of the remedial action. The 1990 National Contingency Plan (NCP) requires compliance with ARARs during remedial actions as well as at completion, and compels attainment of ARARs during removal actions whenever practicable. See NCP, 55 Fed. Reg. 8666, 8843 (March 8, 1990) (to be codified at 40 CFR section 300.414(i)), and 55 Fed. Reg. 8666, 8852 (March 8, 1990) (to be codified at 40 CFR 300.435(b)(2)).

To implement the ARARs provision, EPA has developed guidance, CERCLA Compliance With Other Laws Manual: Parts I and II (Publications 9234.1-01 and 9234.1-02). EPA is preparing a series of short fact sheets that summarize these guidance documents. This Fact Sheet focuses on CERCLA compliance with the Clean Air Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act (Chapters 2 and 3 of Part II). In addition, it discusses other statutes that set standards for radioactive wastes, mining wastes, and other resource protection statutes that are potential ARARs for CERCLA actions.

I. STANDARDS FOR AIR

A. CLEAN AIR ACT (CAA)

The objective of the CAA is to protect and enhance the quality of the nation's air resources. The CAA achieves this objective by regulating emissions into the air through National Ambient Air Quality Standards (NAAQS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and New Source Performance Standards (NSPS). These potential ARARs may apply to both stationary and mobile sources of emissions, and they may be implemented through combined Federal, State, and local programs. See Highlight 1 for CERCLA activities that may trigger CAA ARARs.

1. National Ambient Air Quality Standards (NAAQS)

Under CAA section 109, EPA promulgates NAAQS. NAAQS are national limitations on ambient concentrations intended to protect health and welfare. There are primary and some secondary NAAQS for six pollutants. (See 40 CFR Part 50.) These pollutants (called "criteria pollutants") are: (1) carbon monoxide; (2) lead; (3) nitrogen dioxide; (4) particulate matter equal to or less than 10 microns particle size (PM₁₀); (5) ozone, which results from the emissions of

volatile organic compounds (VOCs); and (6) sulfur oxides. Primary standards are set at health-based levels, while secondary standards are designed to protect public welfare and wildlife.

Highlight 1: CERCLA ACTIVITIES POTENTIALLY SUBJECT TO CAA ARARS

- Air stripping (used to volatilize contamination both, in ground water and in soil);
- Thermal destruction.(e.g., incineration);
- Handling of contaminated soil, including loading, unloading, compacting material in a landfill, and digging;
- Gaseous waste treatment (e.g., flaring used when capping and venting a site, usually at abandoned or inactive landfills); and
- Biodegradation (especially when aeration of liquids is involved).

NAAQS are not applicable to source-specific emissions limitations, nor enforceable in and of themselves. States translate them into source-specific emission limitations through State Implementation Plans (SIPs). The CAA requires each State to adopt and submit to EPA for approval a SIP for implementing and enforcing NAAQS. Upon EPA approval, the SIP becomes both Federally enforceable and a potential Federal ARAR at a site. The SIP may contain State, regional, or local air program requirements, or the State may adopt more stringent standards than those found in the SIP. Both State requirements approved through the SIP process and more stringent State standards issued under State law are potential ARARs for Superfund sites.

In addition to requirements established in SIPs for implementing NAAQS, there are regulatory requirements for “major sources” of emissions. The requirements vary depending upon whether the area in which the source is located is an attainment or a non-attainment area. Attainment areas are those regions of the country that are designated as being in compliance with the NAAQS for criteria pollutants (see 40 CFR Part 81). Nonattainment areas are those parts of the country where compliance has not been attained for one or several criteria pollutants. Therefore, a certain area may be designated as an attainment area for one, and a nonattainment area for another, of the criteria pollutants. RPMs should contact EPA Regional Air Branch Chiefs or their Air/Superfund Coordinators for additional questions concerning attainment and non-attainment areas.

In general, emissions from CERCLA activities are not expected to qualify as “major;” therefore, these requirements are not likely to be applicable to CERCLA response actions. **Highlight 2** summarizes these requirements for major sources in attainment and non-attainment areas.

For a site where a ground-water pump-and-treat technique or soil vapor extraction is used together with air strippers in an ozone non-attainment area, the June 15, 1989 memorandum entitled, “Control of Air Emissions from Superfund Air Strippers at Superfund Groundwater Sites” (OSWER Directive 9355.0-28), **Is an important to-be-considered (TBC)**. The guidance indicates that sources that need controls are those with actual emissions rates in excess of 3 lbs/hr, or 15 lbs/day, or a calculated rate of 10 tons/year (T/yr) of total VOCs.

2. National Emissions Standards for Hazardous Air Pollutants (NESHAPs)

Hazardous air pollutants are those pollutants for which no ambient air quality standard exists, but which cause, or contribute to, air pollution that may reasonably be anticipated to result in an increase in mortality or an

Highlight 2: REQUIREMENTS FOR MAJOR SOURCES IN ATTAINMENT AND NON-ATTAINMENT AREAS

Attainment Areas and Areas Defined as Unclassified.

- **Requirement:** Prevention of Significant Deterioration (PSD) regulations, found at 40 CFR Part 52, require that affected sources meet an emission limit that reflects the installation and operation of Best Available Control Technology (BACT). PSD permit regulations also require that the source meet specified air quality deterioration increments.
- **Applicable To:** New stationary major source of emissions and major modification to existing source in an attainment or unclassified area.
- **Definition of Major Source:** Either emits 250 or more T/yr of any regulated pollutant, or the site has a facility such as an incinerator or chemical processing plant that emits 100 or more T/yr.

Non-attainment Areas

- **Requirement:** Must meet Lowest Achievable Emission Rate (LAER). Additionally, the SIP must contain a growth allowance or the operator of the source must provide an emissions offset.
- **Applicable To:** Anything that falls within the definition of a major source for non-attainment areas (not source-specific).
- **Definition of Major Source:** Emissions of 100 or more T/yr of the pollutant designated as non-attainment in that area.

increase in serious irreversible illness. The CAA requires EPA to list periodically the hazardous air pollutants it intends to regulate, and to establish emission standards (NESHAPs) for them. NESHAPs are listed at 40 CFR Part 61.

NESHAPs have been promulgated for emissions of particular air pollutants from specific sources. NESHAPs are not generally applicable to Superfund response actions because CERCLA sites do not usually contain one of the specific source categories regulated. More-

over, NESHAPs are generally not relevant and appropriate because the standards are intended for the specific sources regulated and their use will generally not be well-suited for all sources of that pollutant. As a possible exception, the NESHAPs for asbestos and radionuclides may be ARARs for a CERCLA site (see **Highlight 3**).

3. New Source Performance Standards (NSPS)

The CAA requires EPA to promulgate NSPS for new stationary sources that emit particular pollutants that cause or significantly contribute to air pollution. Since NSPS are source-specific requirements, they are not applicable to Superfund response actions unless they include a “new source subject to NSPS, such as a municipal waste combustor. If the response action does not include a source subject to NSPS, NSPS may be relevant and appropriate if the pollutant emitted and the technology employed at the site are sufficiently similar to the pollutant and source category regulated by an NSPS, so that their use is well-suited to site circumstances. For example, if cleanup involves incineration at a municipal landfill, the NSPS for particulate emissions from incinerators with a charging rate of 50 T/day, which are used for burning solid waste containing more than 50 percent municipal-type waste, may be a potential ARAR.

B. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AIR EMISSION REGULATIONS

There are RCRA regulations covering hazardous waste air emissions from incinerators, land disposal facilities, and other treatment, storage, and disposal facilities (TSDFs). The potential ARARs for incinerators consist of standards for destruction and removal efficiency, for products of incomplete combustion, metals, and emissions of hydrogen chloride, and for particulates. Potential ARARs for land disposal facilities are limited to the requirement that particulate matter from such facilities be controlled by covers or other means. Potential ARARs for TSDFs include air emission standards for process vents and equipment leaks, and air emission standards for container storage, tanks, surface impoundments, and waste fixation units (see 40 CFR Parts 264 and 269).

C. STATE AIR TOXIC PROGRAMS

Several State air pollution control agencies have adopted programs to regulate “toxic air pollutants.” These requirements are likely to be the most significant air emission ARARs at Superfund sites. Different States have regulations for different pollutants and have adopted differing levels of safety. RPMs should coordinate with the appropriate State agency and their own Regional Air/Superfund Coordinator to determine what potential ARARs (if any) the pertinent State

Air Toxic Program contains.

Highlight 3. POTENTIAL NESHAP ARARs

POTENTIAL ASBESTOS NESHAP ARARs

- 40 CFR section 61.147 establishes procedures for asbestos emission control during demolition of buildings or equipment containing friable asbestos material. This regulation may be an ARAR for a response action that includes demolishing a building containing asbestos.
- 40 CFR section 61.153 sets standards for inactive waste disposal sites from asbestos mills and manufacturing and fabricating operations; 140 CFR section 61.156 establishes standards for active waste disposal sites; and 40 CFR section 61.152 establishes standards for disposal of asbestos containing waste from demolition and renovation operations. These standards may be ARARs for response actions involving asbestos disposal.

POTENTIAL RADIONUCLIDE NESHAP ARARs

- 40 CFR Part 61, Subparts H and I are applicable to airborne emissions of radionuclides (excluding radon-220 and 222 for Subpart H and radon-222 for Subpart I) from incinerators, land disposal facilities, and other TSDFs for radioactive materials, during the cleanup of sites at Department of Energy (DOE) facilities, Nuclear Regulatory Commission-licensed facilities, and non-DOE Federal facilities, such as Department of Defense facilities.
- 40 CFR Part 61, Subpart T applies to radon-222 emissions from the disposal of uranium mill tailings; Subpart W applies to uranium mill tailings piles during operation, Subpart R applies to radon-222 emissions from phosphogypsum stacks (piles) after disposal; and Subpart Q applies to radon-222 emissions from storage and disposal facilities for radium-containing material that are owned or operated by DOE: (see NCP, 54 Fed. Reg. 51654 (December 15, 1989) for Subparts T, Q, and R). These subparts may be ARARs if the response action occurs at an underground uranium mine or at a uranium mill site. They may be potential ARARs for other CERCLA sites (especially mining sites).

II. STANDARDS FOR TOXICS AND PESTICIDES

A. TOXIC SUBSTANCES CONTROL ACT (TSCA)

TSCA authorizes EPA to establish testing, premanufacture notification, control, and recordkeeping regulations pertaining to toxic chemical substances. Those requirements that regulate control of polychlorinated biphenyls (PCBs), fully halogenated chlorofluoroalkanes, and asbestos are potential ARARs for CERCLA response actions. In addition, EPA generates risk numbers for chemicals to be studied under TSCA. These risk numbers for particular chemicals may constitute guidelines that are TBC, and may be consulted when developing a protective remedy.

1. PCB Disposal Requirements

PCB disposal requirements under TSCA will be applicable if disposal of material contaminated with PCBs at concentrations of 50 ppm or greater occurred after February 17, 1978. (These requirements may be relevant and appropriate if disposal occurred before that date.) TSCA requirements for disposal of PCB-contaminated wastes vary according to the physical state of the PCBs (liquid, nonliquid, or articles), and PCB concentration. See the CERCLA Compliance with Other Laws Manual Part II, Chapter 3 (pp. 3-2 through 3-5) for a complete list of potential TSCA ARARs for PCBs. The Office of Emergency and Remedial Response is finalizing a Guidance on Remedial Actions for Superfund Sites with PCB Contamination (OSWER Directive 9355.4-01) that discusses the circumstances under which the PCB antidilution requirements may apply at CERCLA sites.

2. PCB Storage Requirements

The substantive portions of the PCB storage requirements found at 40 CFR section 761.65 may be ARARs for the storage of PCBs prior to disposal. Other potential ARARs include requirements for PCB storage facilities and containers.

3. PCB Spill Cleanup Policy

EPA has published a nationwide TSCA PCB spill cleanup policy in 40 CFR Part 61, Subpart G. The action-specific and cleanup guidelines contained within this policy are potential TBCs, especially with respect to the cleanup of PCB-contaminated soils. The spill policy is effective for PCB spills occurring after May 4, 1987.

B. RCRA LAND DISPOSAL RESTRICTIONS (LDRs) FOR PCBs

The land disposal of liquid RCRA hazardous wastes that

contain PCBs at concentrations equal to or greater than 50 ppm, are regulated by RCRA under the California List Wastes LDRs, promulgated on July 8, 1987 (see **Highlight 4**). RCRA LDRs for PCBs may be ARARs when the response action involves excavating, dredging, or other measures that move PCB-contaminated materials into a land-based unit.

Highlight 4: RCRA LDR REQUIREMENTS FOR PCBs

- Liquid RCRA hazardous wastes containing PCBs at concentrations between 50 and 499 ppm must be incinerated (or treated by an equivalent method) in a facility that meets the requirements of 40 CFR section 761.70, or burned in a high efficiency boiler meeting the requirements of 40 CFR section 761.60. See 40 CFR section 268.42(a)(1).
- Liquid RCRA hazardous wastes containing PCBs at concentrations equal to or greater than 500 ppm must be incinerated consistent with the technical requirements of 40 CFR section 761.70 or be treated by an equivalent method. See, 40 CFR section 268.42(a)(1).
- Nonliquid and liquid RCRA hazardous wastes containing PCBs and halogenated organic compounds (HOCs) must be incinerated consistent with the requirements of Part 264, Subpart O, or Part 265, Subpart O, if the total concentration, of HOCs is equal to or greater than 1,000 mg/kg. In the proposed third thirds rule under RCRA, EPA is proposing to revoke the California List provision allowing burning of HOCs in furnaces and boilers (see 54 Fed. Reg. 48499.(November 22, 1989)). This rule will not, affect the PCB regulations mentioned above.

C. FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)

FIFRA authorizes EPA to regulate the sale, distribution, and use of all pesticide products in the United States through product licensing or registration. Under FIFRA, use of a product in a manner inconsistent with its labeling is a violation of the Act. However, compliance with FIFRA by following labeling directions may not be required at a Superfund site since the pesticide may be a RCRA waste at that point.

TBCs under FIFRA include nonbinding “procedures not recommended” for disposal of pesticides (see 40 CFR section 165.7) and nonbinding “recommended procedures” for disposal of pesticides (see 40 CFR section 165.8). In addition to disposal TBCs, there are tolerance levels for pesticides and pesticide residuals in or on raw agricultural commodities. These tolerance levels are potential ARARs where sites have agricultural commodities or wildlife for consumption.

Discharges of pesticides to surface waters through a point source are subject to effluent limitations as toxic pollutants under the Clean Water Act (CWA). The CWA requirements are, therefore, potential ARARs for such discharges. In addition, discarded or off-specification pesticides may be regulated under RCRA Subtitle C as listed or characteristic hazardous wastes. Thus, RCRA Subtitle C requirements are potential ARARs for such pesticides.

III. STANDARDS FOR RADIOACTIVE WASTES

There are few standards applicable to the cleanup of radioactively contaminated sites and buildings, except for standards for mill tailings under the Uranium Mill Tailings Radiation Control Act and EPA’s standards (when promulgated) for residual radioactivity for cleanup of a site where radionuclides have been used. Other standards for radioactive waste may be relevant and appropriate when determined to be well-suited for cleanup of a specific site. When reviewing potential ARARs, it is important to determine under which Agency’s regulatory jurisdiction a site falls, in order to help determine applicability.

A. POTENTIAL EPA ARARs FOR RADIOACTIVE WASTE

Under the CAA, EPA has promulgated radionuclide NESHAPs for five different source categories. Subparts H and I, which address DOE, Nuclear Regulatory Commission (NRC)-licensed, and non-DOE Federal facilities, are most likely to be potential ARARs for CERCLA response actions (see 40 CFR Part 61). Under the Safe Drinking Water Act EPA has promulgated maximum contaminant levels (MCLs) for radionuclides in two forms: (1) radioactivity concentration limits for certain alpha-emitting radionuclides; and (2) an annual dose limit for the ingestion of certain beta/gamma-emitting radionuclides (see 40 CFR Part 141). Since the radionuclides MCLGs equal zero, the MCLs are potential ARARs for Superfund sites. Under the Atomic Energy Act, there are environmental protection standards that set limits on radiation doses received by members of the general public from operations within the uranium fuel cycle of nuclear generators. While these standards are not applicable because they apply to normal operations and planned discharges, they may be relevant and appropriate to releases of radionuclides and radiation during cleanup of radioactively contaminated sites (see 40 CFR Part 190). Under the Uranium Mill Tailings Radiation Control Act, EPA has set standards for mill tailings at two types of sites: (1) certain inactive uranium processing sites “designated” for remedial action under section 102 of the Uranium Mill Act; and (2) commercial uranium and thorium processing sites licensed by the NRC or States (see 40 CFR Part 192). EPA

has also established surface-water discharge standards for radionuclides. These standards are applicable to discharges from certain kinds of mines and mills; they may be relevant and appropriate to response actions involving discharges of radionuclides to surface waters from other types of sites (see 40 CFR Part 440).

B. POTENTIAL NRC ARARs FOR RADIOACTIVE WASTE

Standards found in 10 CFR Part 20 may be applicable to CERCLA actions at NRC-licensed facilities; they may be relevant and appropriate to CERCLA actions at radioactively contaminated sites not licensed by the NRC. These standards establish permissible levels of radiation in unrestricted areas, concentration limits for discharges to unrestricted areas, and waste disposal requirements.

Standards found in 10 CFR Part 61 establish criteria applicable to existing licensed low-level waste disposal sites. These criteria are not applicable to previously closed sites such as existing CERCLA sites. However, the technical requirements may be relevant and appropriate to CERCLA sites with low-level radioactive waste, if the waste will be permanently left on site.

Standards found in 10 CFR Parts 30, 40, and 70 contain licensing requirements for the possession and use of byproduct, source, and special nuclear material, respectively. Any substantive requirements found within these standards may be applicable to response actions at sites licensed under these NRC regulations. They may be relevant and appropriate to other, non-licensed sites that contain radioactive contamination.

C. POTENTIAL DOE ARARs FOR RADIOACTIVE WASTE

Most of DOE’s operations are exempt from NRC’s licensing and regulatory requirements. DOE’s requirements for radiation protection and radioactive waste management are found in internal DOE orders. These

orders have the same force for DOE facilities as does a regulation; however, because they are not promulgated requirements, they are not potential ARARs. The requirements in the orders are applicable only to DOE installations and do not apply to sites outside of DOE's jurisdiction.

Because DOE's orders typically incorporate requirements promulgated by other Federal agencies, they

should be consistent with existing regulations. To the extent that they are more stringent or cover issues not addressed by existing ARARs, they may be TBCs at a site. The most important DOE orders concerning radiation protection and radioactive waste management are DOE 5400.5, "Radiation Protection of the Public and the Environment," and DOE 5820.2A "Radioactive Waste Management."

IV. STANDARDS FOR MINING WASTES

Potential ARARs under the Uranium Mill Tailings Radiation Control Act are discussed in the preceding section. Other potential ARARs for mining wastes are found in the Surface Mining Control and Reclamation Act and in the Resource Conservation and Recovery Act.

A. SURFACE MINING CONTROL AND RECLAMATION ACT (SMCRA)

Requirements under SMCRA may be applicable to response actions associated with abandoned coal mines (see 30 CFR Part 816). **Highlight 5** illustrates when requirements in 30 CFR Part 816 may be relevant and appropriate for response actions at other types of mining sites.

Highlight 5. POTENTIAL MINING WASTE ARARS

- Where a site contains geologic materials containing sulfides, there may be a release or threat of release of acid. Such a release could mobilize a related release of acid-soluble metals that are hazardous substances, thus adversely affecting aquatic and other resources. 30 CFR part 816.4 requirements that boreholes and shafts be sealed to prevent drainage from or into ground water may be Relevant and appropriate to such a site.
- Where a site is subject to erosion, it is vulnerable to releases of wastes that are contaminated by heavy metals. Revegetation requirements found in 30 CFR section 816.111 may be relevant and appropriate to protect a cap at a CERCLA raining site from erosion and to prevent further releases of arsenic or heavy metals.

B. RCRA STANDARDS

RCRA section 3001(b) (known as the Bevill Amendment) temporarily prohibited EPA from regulating, as hazardous waste, the solid waste from the extraction and processing of ores and minerals, pending further study and regulation by the Agency. Therefore, Subtitle C requirements were not applicable to mining wastes, nor to soil and debris wastes contaminated with mining wastes (since the contamination does not derive from a RCRA hazardous waste) until EPA made a regulatory determination to remove a certain mining waste or waste stream from the Bevill Amendment exclusion. The Bevill Amendment exempted these wastes from Subtitle C requirements even if a waste would otherwise be considered a characteristic hazardous waste. However, the mining wastes may come within the CERCLA definition of hazardous substances, even if they do not contain RCRA hazardous wastes.

EPA has retained 20 mineral processing wastes as "special wastes" (i.e., high volume/low toxicity wastes) under the Bevill Amendment exclusion, which are therefore exempt from Subtitle C requirements until a final regulatory determination is made of their status in January, 1991 (see 54 Fed. Reg. 36592 (September 1, 1989) and 55 Fed. Reg. 2322 (January 23, 1990)). All of the mineral processing wastes that were permanently removed by EPA from the Bevill Amendment exclusion (i.e., any mineral processing waste other than the abovereferenced 20) are subject to RCRA Subtitle C regulation if they are solid wastes and exhibit one or more of the characteristics of hazardous waste, or are otherwise listed as hazardous wastes (see 55 Fed. Reg. 2322, 2323 (January 23, 1990.)) EPA has listed the following six smelting wastes as RCRA hazardous wastes: K064, K065, K066, K088, K090 and K091. Therefore, RCRA Subtitle C requirements are potential ARARs for sites containing these wastes (see 53 Fed. Reg. 35412 (September 13, 1988)).

Whether RCRA Subtitle C requirements are relevant and appropriate for mineral processing wastes that are within the Bevill Amendment exclusion should be determined on a site-specific basis. However, RCRA Subtitle C requirements are not expected to be relevant and appropriate for most of the exempted wastes because many of the same factors that justified an exemption are used to determine relevance and appropriateness (see NCP, 55 Fed. Reg. 8666, 8763 (March 8, 1990)).

Mining wastes that are not currently regulated under Subtitle C may be subject to Subtitle D requirements. Subtitle D provides performance standards used by States to set standards acceptable for solid waste facilities and management practices. The Agency is developing regulations under Subtitle D specifically for those mining wastes that are not to be regulated as hazardous waste. When promulgated, these regulations may be ARARs for sites where those mining wastes are present.

V. OTHER RESOURCE PROTECTION STATUTES

The resource protection laws discussed in this section contain some substantive requirements which may be ARARs, but the majority of their requirements are administrative, such as consultation and reporting requirements. Unlike off-site CERCLA response actions, on-site CERCLA investigative and response actions are not required to meet administrative requirements (see NCP, 55 Fed. Reg. 8666, 8756 (March 8, 1990)). However, the lead agency should consider consulting with relevant Federal, State, and local agencies to take advantage of their expertise, when an issue arises that is under their jurisdiction (see NCP, 55 Fed. Reg. 8666, 8757 (March 8, 1990)). Consultation is most advantageous when initiated early in the process, such as during the preliminary assessment for site investigation.

A. NATIONAL HISTORIC PRESERVATION ACT (NHPA)

Pursuant to sections 106 and 110(f) of NHPA, the lead agency is required to take into account the effects of CERCLA response actions on any historic properties included on, or eligible for inclusion on the National Register of Historic Places. The National Register lists historic properties (known as “cultural resources”), which consist of districts, sites, buildings, structures, and objects that are significant in American history or culture for their architectural, archeological, engineering, or other aspects. For instance, the substantive requirement to avoid adverse effects on cultural resources, found in 36 CFR section 800.5(e), is a potential ARAR.

To comply with potential NHPA ARARs, the lead agency should initially determine whether there are any possible historic properties located on or near the site, or within or near the area under study in the remedial investigation. For example, many CERCLA sites could contain remains of archeological significance, such as American Indian artifacts. If such a possibility seems likely, the lead agency should first contact the Department of the Interior (DOI), which maintains the National Register. Single copies of the National Register are available from: National

Register, U.S. Department of the Interior, Washington, DC 20240. Annual updates of new National Register listings are published in the Federal Register each February or March. The Federal Register will also list properties already determined by the Secretary of Interior to be eligible for the National Register. Finally, information on National Register listings may also be obtained from the State Historic Preservation Officers (SHPOs), who are appointed by their respective governors.

If the site or any portion of the site has not been determined by the DOI to be eligible for inclusion on the National Register, the lead agency should make such a determination. The regulations at 36 CFR section 60.4 establish the criteria used to determine whether properties qualify for inclusion on the National Register. These criteria are applied to properties through a “cultural resource survey” (CRS). Most of the information needed to complete the CRS will be developed during the RI/FS. When cultural resources are identified, the lead agency evaluates and considers any effects upon cultural resources as part of its review of alternatives during the RI/FS, in order to avoid or minimize adverse effects on these resources. See the CERCLA Compliance with Other Laws Manual, Part II, Chapter 4 (pp. 4-6 through 4-10) for further detailed discussion. Consultation procedures between EPA, the Advisory Council, and SHPOs are being formalized in a Programmatic Memorandum of Agreement (in draft at the time of this printing).

B. ENDANGERED SPECIES ACT (ESA)

Section 7(a) of the ESA requires Federal agencies to consult with DOI and the National Oceanic and Atmospheric Administration (NOAA), as appropriate, to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify or destroy their critical habitats. Actions that might jeopardize species include direct and indirect effects, as well as the cumulative effects of other actions, whether interdependent, interrelated, or located on another nearby hazardous waste cleanup site.

Substantive ARARs under the ESA consist of the requirements that the lead agency determine whether a threatened or endangered species, or its critical habitat, will be affected by a proposed response action. This is accomplished through the performance of a biological assessment. If such a determination is made that a threatened species or habitat will be affected by the planned action, the lead agency must avoid the action or take appropriate mitigation measures. If at any point the conclusion is reached that endangered species are not present or will not be affected, no further analysis or action would be required in order to comply with ESA.

To determine whether the project is likely to jeopardize the continue existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat, the lead agency should consult with the U.S. Fish and Wildlife Service (FWS) for terrestrial and freshwater species and NOAA for marine species. EPA (Office of Solid Waste and Emergency Response), FWS, and NOAA are planning to formalize consultation procedures for both removal actions and on-site remedial actions in a Memorandum of Understanding (in draft at the time of this printing).

C. WILD AND SCENIC RIVERS ACT (WSRA)

The WSRA establishes requirements that apply to water resource projects affecting wild, scenic, or recreational rivers within the National Wild and Scenic Rivers System, as well as rivers designated on the National Rivers Inventory to be studied for inclusion in the National System. For purposes of the Act, a project is a dam, water conduit, reservoir, powerhouse, transmission line, discharge to waters, or other water resources project that would affect the free-flowing characteristics of the water. If a response action could affect the free-flowing characteristics of such a river, the requirement that such action should minimize adverse impacts may be a potential ARAR. Response alternatives should be developed in consultation with DOI (National Park Service) and the Department of Agriculture.

D. FISH AND WILDLIFE COORDINATION ACT (FWCA)

The FWCA protects fish and wildlife through the review of actions that control or structurally modify a natural stream or body of water. A potential ARAR under the FWCA is the requirement to consider the effect that such water-related projects would have upon fish and wildlife, and take action to prevent loss or damage to these resources. While consultation with FWS or NOAA is required under CERCLA only if alteration of the water resource would occur from off-site activities (e.g., a change in the rate of flow), consultation is strongly recommended for on-site

activities as well.

E. COASTAL ZONE MANAGEMENT ACT (CZMA)

The CZMA regulates actions by Federal agencies that directly affect the coastal zone. The Act requires Federal agencies to conduct or support their activities in a manner consistent with approved State coastal zone management programs (CZMPs). The requirement to determine whether a response action will have any effect (whether adverse or not) on the coastal zone of a State with an approved CZMP is a potential ARAR. Specifically, the lead agency is required to determine whether the activity will be consistent, to the maximum extent practicable, with the State's CZMP. The lead agency should notify the State of its determination. Copies of a State's CZMP may be obtained from the State's coastal commission. All coastal States have approved CZMPs except for Georgia, Texas, Ohio, Indiana, Illinois, and Minnesota. For off-site actions that require a Federal permit, the State must certify that the proposed activity complies with its coastal zone management plan (see CZMA section 307(c)(3)).

F. WILDERNESS ACT (WA)

The WA administers wilderness areas to preserve their character and to keep them unimpaired for future use as wilderness. To comply with ARARs under the WA, the RPM must first identify whether the response action would affect designated wilderness areas (see 16 USC section 1132). The Regional NEPA Compliance Staff should be able to identify these areas. If a potential impact is anticipated, the RPM should determine whether any prohibitions apply to the proposed response action. To take advantage of their expertise, the RPM should consult with the NEPA Compliance Staff and the administering agency to make this determination. The RPM should then determine whether an exemption is necessary under the WA or CERCLA.

G. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Like the NEPA regulations, the RI/FS and remedy selection process under CERCLA provide for consideration of the potential impacts of CERCLA response actions on the environment, and provide for significant public participation. EPA response actions are not required to follow procedures in addition to those in the NCP in order to comply with NEPA.